

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:17-cr-00049-RLY-MPB
	)	
MATTHEW DEAN SMITH,	)	-04
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

On March 9, 2022, the Court held a final hearing on the Petition for Warrant for Violation of Supervised Release filed on February 23, 2022. ([Dkt. No. 170](#)). Defendant Smith appeared in person with his appointed counsel Dax Womack. The government appeared by Matt Miller, Assistant United States Attorney. The United States Probation and Parole Office appeared by Officer Justin Driskill.

This matter was referred to the Magistrate Judge to conduct a hearing and make a report and recommendation as to the disposition. ([Dkt. No. 176](#)). The defendant was advised that the District Judge is not bound to accept the Report and Recommendation.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Smith of his rights and provided him with a copy of the petition.
2. Defendant waived his right to a preliminary hearing.
3. After being placed under oath, Defendant Smith admitted violations No. 1, 2 and 3 ([Dkt. No. 170](#)).

4. The allegations to which Defendant admitted, as fully set forth in the petition, are:

	Violation Number	Nature of Noncompliance
	1	<p>"You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage."</p> <p>On January 24, 2022, Matthew Smith tested positive and admitted to ingesting methamphetamine. Furthermore, Mr. Smith self admitted ingesting methamphetamine on February 15, 2022.</p> <p>As previously reported to the Court, Mr. Smith tested positive and admitted to ingesting methamphetamine on January 10, 2022, January 5, 2022, December 28, 2021, December 16, 2021 and July 29, 2021. Additionally, Mr. Smith tested positive and admitted to ingesting buprenorphine on April 23, 2019.</p>
	2	<p>"You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods."</p> <p>Matthew Smith failed to appear for random drug screens on the following dates: August 20, 2021, November 25, 2021, December 14, 2021, January 7, 2022, January 13, 2022, January 19, 2022, January 21, 2022.</p>
	3	<p>"You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer."</p> <p>Mr. Smith has missed eight (8) scheduled substance abuse treatment sessions.</p>

5. The parties stipulated that:

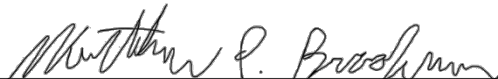
- (a) The highest grade of violation is a Grade **B** violation.
- (b) Defendant's criminal history category is **III**.
- (c) The advisory range of imprisonment applicable upon revocation of supervised release, therefore, is **8 to 14** months' imprisonment.

The Parties jointly recommend a sentence of twelve (12) months and one (1) day of imprisonment with no further supervision to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he be sentenced to custody of the Attorney General or his designee for a period of twelve (12) months and one (1) day with no further supervision upon release.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: March 10, 2022

  
Matthew P. Brookman  
United States Magistrate Judge  
Southern District of Indiana

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